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September 22, 2017

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

ACCEPTED/FILED

SEP 22 2017

Federal Communications Commission
Office of the Secretary

Re: Amendment of Section 73.622(i),
Post-Transition Table of DTV Allotments
Television Broadcast Stations.
(Seaford, Delaware)
MB Docket No. 09-230
Motion to Dismiss

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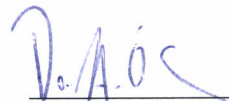
Dear Ms. Dortch:

Transmitted herewith, on behalf of Western Pacific Broadcast LLC, are an original and eleven (11) copies of its Motion to Dismiss the September 22, 2016 Petition for Reconsideration filed by PMCM TV, LLC in the above-captioned proceeding.

Should you have any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP



David A. O'Connor
Robert D. Primosch
Counsel for Western Pacific Broadcast LLC

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Amendment of Section 73.622(i),) MB Docket No. 09-230
Post-Transition Table of DTV Allotments,)
Television Broadcast Stations)
(Seaford, Delaware))

ACCEPTED/FILED

To: Office of the Secretary, FCC
For: The Commission

SEP 22 2017

MOTION TO DISMISS

Federal Communications Commission
Office of the Secretary

Western Pacific Broadcast LLC ("WPB"), licensee of television station WMDE(TV), channel 5, Dover, Delaware ("WMDE"), by its counsel, hereby moves to dismiss the September 22, 2016 Petition for Reconsideration (the "2016 Petition") filed by PMCM TV, LLC ("PMCM"), the former licensee of station KJWP(TV), channel 2, Wilmington, Delaware ("KJWP").¹ PMCM seeks reconsideration of the Commission's August 4, 2016 *Memorandum Opinion and Order* in this docket.² In that decision, the Commission denied PMCM's June 2, 2014 Application for Review of three separate Media Bureau decisions and upheld the allotment of channel 5 to Seaford, Delaware, WMDE(TV)'s original community of license.³

¹ PMCM TV, LLC Petition for Reconsideration, MB Docket No. 09-230 (filed Sept. 22, 2016) ("2016 Petition"). No public notice regarding the 2016 Petition has been published by the Commission in the Federal Register, as required in order to commence a formal pleading cycle under Section 1.429(e) of the Commission's rules. See 47 C.F.R. § 1.429(e).

² *Seaford, Delaware*, Memorandum Opinion and Order, 31 FCC Rcd 9388 (2016) (the "2016 Seaford MO&O").

³ See PMCM TV, LLC Application for Review, MB Docket No. 09-230 (filed June 2, 2014) ("PMCM AFR"). In the PMCM AFR, PMCM challenged (1) the *Seaford Report and Order* that allotted channel 5 to Seaford, Delaware; (2) the *Seaford MO&O on Reconsideration*, in which the Bureau rejected a third-party petition for reconsideration of the *Seaford Report and Order*; and (3) the *Seaford MO&O on Further Reconsideration* dismissing PMCM's petition for reconsideration of the *Seaford Report and Order* and the *Seaford MO&O on Reconsideration*. (continued)...

As shown below, PMCM no longer has any claim of standing to challenge the 2016 *Seaford MO&O*, and thus the 2016 Petition should be dismissed or denied.

PMCM grounded its claim of standing on its assertion that WMDE's authorized technical facilities on channel 5 at Seaford produced contour overlap with KJWP, and thus were likely to cause economic injury to KJWP.⁴ Even if true, this means that PMCM's claim of standing is tied entirely to whether PMCM is the licensee of KJWP. On August 31, 2017, PMCM assigned the license for KJWP to Maranatha Broadcasting Company, Inc.⁵ Because PMCM is no longer the licensee of KJWP, PMCM no longer has any basis for claiming economic or other injury from the Commission's allotment of channel 5 to Seaford.⁶ PMCM therefore lacks standing to

See Seaford, Delaware, Report and Order, 25 FCC Rcd 4466 (MB 2010) ("*Seaford Report and Order*"); *Seaford, Delaware*, Memorandum Opinion and Order on Reconsideration, 28 FCC Rcd 1167 (MB 2013) ("*Seaford MO&O on Reconsideration*"); *Seaford, Delaware*, Memorandum Opinion and Order on Further Reconsideration, 29 FCC Rcd 4769 (MB 2014) ("*Seaford MO&O on Further Reconsideration*"). On the same day that the Bureau released the *Seaford MO&O on Further Reconsideration*, it released a *Report and Order* granting WPB's rulemaking petition to change WMDE(TV)'s community of license from Seaford to Dover, Delaware. *Western Pacific Broadcast, LLC*, Report and Order, 29 FCC Rcd 4773 (MB 2014).

⁴ PMCM TV, LLC Reply to Opposition to Application for Review, MB Docket No. 09-230, at 1 n. 1) (filed July 2, 2014) ("[The Seaford rulemaking] culminated in agency approval of new commercial television station WMDE at Seaford, Delaware, the authorized technical facilities of which produce the expected cognizable signal contour overlap with KJWP. . . [T]he Seaford allotment was therefore likely to cause economic injury to PMCM through loss of viewership and advertising revenue and PMCM clearly has standing under well-settled precedent.") (citation omitted).

⁵ See FCC File No. BALCDT-20160105ABB; see also http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/app_det.pl?Application_id=1756793 (noting the August 31, 2017 consummation date). There is no indication in the record that the new licensee of KJWP has sought to intervene in this proceeding in any manner.


⁶ See, e.g., *Lakes Area B'casting Co.*, Memorandum Opinion and Order, 48 FCC 2d 640 (1974) (petitioner's claim of standing was moot because petitioner was no longer the licensee of any station in the geographic area in question); *Little Rock Hispanic Education Family Foundation* [sic], Memorandum Opinion and Order, 31 FCC Rcd 13762 (2016) (dismissal of application for review due to lack of standing).

pursue its challenge of the Seaford channel 5 allotment, the *2016 Seaford MO&O* or any subsequent Commission decisions that may be related thereto.

Accordingly, WPB requests that the 2016 Petition be dismissed or denied in accordance with Section 1.429(i) of the Commission's rules.⁷

Respectfully submitted,

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September 22, 2017

⁷ 47 C.F.R. § 1.429(i).

CERTIFICATE OF SERVICE

I, Paula Lewis, an employee of Wilkinson Barker Knauer, LLP, hereby certify that a copy of the foregoing Motion to Dismiss was served on September 22, 2017, by first class mail unless otherwise noted, to the following:

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